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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91180471
Party	Plaintiff Marc Vianello
Correspondence Address	Arthur K. Shaffer Intellectual Property Center, LLC 9233 Ward Parkway Suite 100 Kansas City, MO 64114 UNITED STATES ashaffer@theIPCenter.com
Submission	Motion to Compel Discovery
Filer's Name	Arthur K. Shaffer
Filer's e-mail	ashaffer@theIPCenter.com, manesha@theIPCenter.com
Signature	/Arthur K. Shaffer/
Date	06/19/2008
Attachments	Motion and Brief to Compel Discovery.pdf (7 pages)(22519 bytes) Exhibit A_motion to Compel.pdf (26 pages)(1161249 bytes) Exhibit B_motion to Compel.pdf (3 pages)(716997 bytes) Exhibit C_motion to Compel.pdf (1 page)(312364 bytes) Exhibit D_motion to Compel.pdf (4 pages)(1475582 bytes) Exhibit E_motion to Compel.pdf (3 pages)(1008946 bytes) Exhibit F_motion to Compel.pdf (3 pages)(323415 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD

Marc Vianello)	
)	
Opposer,)	
)	
v.)	Opposition No.:91180471
)	
Sandra Nudelman)	
)	
Applicant.)	

**OPPOSER’S COMBINED MOTION TO COMPEL
AND MOTION TO EXTEND DISCOVERY AND TRIAL DATES**

Pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Marc Vianello (“Opposer”) respectfully moves the Board for an order compelling Applicant Sandra Nudelman. (“Applicant”) to make herself available to Opposer’s Deposition Request without objections.

In addition, Opposer requests an extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to consider Applicant’s deposition testimony as ordered by the Board, and to pursue follow-up discovery if necessary.

Such an order is appropriate because Applicant failed entirely to respond to Opposer’s Interrogatories and Document Requests prior to the Discovery cut-off date and Applicant failed to make herself available for the scheduled Deposition and has since stated that she will not comply with Opposer’s deposition request. Counsel for Opposer has made good faith efforts to resolve the issues with Applicant but, to date, such efforts have been unsuccessful.

I. BACKGROUND

On October 31, 2007, Opposer filed a Notice of Opposition against Application Serial No. 77/110,266 for Ms. Nudelman's mark for "background investigation and research services" and "legal services." Opposer asserts, among other things, that it owns the distinctive marks shown in Serial Nos. 77/031,981, 77/212,172, ("the Vianello Marks") for various electronic and print publication needs¹. Opposer also asserts that he has extensively used and promoted the Vianello marks in the United States since at least as early as September 1, 2007 (Not. of Opp. ¶ 2-5), well prior to the date of Applicant's use of Applicant's mark which was filed as an Intent to Use and no Statement of Use has been entered. As grounds for the opposition, Opposer alleges priority of use and likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C § 1052(d) and dilution under Section 43(c) of the Trademark Act 15 U.S.C. § 1125(c). (Not. of Opp. ¶¶6-8).

¹ THE JUDICIAL VIEW, U.S. Application Serial No. 77/031,981, filed October 30, 2006, in international class 041 for "publication of an online legal newspaper," and THE JUDICIAL VIEW, U.S. Application Serial No, 77/212,172, filed June 21, 2007, in international class 038 for "providing e-mail notification alerts of recent court decisions to others" and in international class 041 for "providing on-line publications in the nature of newspapers, newsletters, magazines, and articles in the field of law, classified advertising, display and text advertising, law review, legal case summaries, feature articles, current events, civil rights, finance and banking, communications, immigration, education, politics, administrative law, agriculture, intellectual property, antitrust, bankruptcy, civil procedure, civil remedies, commercial contracts, computer and technology, conflicts at law, constitutional law, criminal justice, corporate and shareholder law, employment law, energy and utilities, environmental law, expert witness, family law, health, immigration, international law, lost profits, maritime and marine, military, products liability, professional malpractice, real and personal property, securities law, federal, state and local taxation, torts and personal injury, veterans, wills, trusts and estates, sports, entertainment, art, government, insurance, transportation, business valuation, alternative dispute resolution and legal matters; on-line journals, namely, blogs featuring information on recent court decisions, current events, civil rights, finance and banking, communications, immigration, education, politics, administrative law, agriculture, intellectual property, antitrust, bankruptcy, civil procedure, civil remedies, commercial contracts, computer and technology, conflicts at law, constitutional law, criminal justice, corporate and shareholder law, employment law, energy and utilities, environmental law, expert witness, family law, health, immigration, international law, lost profits, maritime and marine, military, products liability, professional malpractice, real and personal property, securities law, federal, state and local taxation, torts and personal injury, veterans, wills, trusts and estates, sports, entertainment, art, government, insurance, transportation, business valuation, alternative dispute resolution and legal matters."

On October 31, 2007, the Board instituted this proceeding and set discovery to open on November 20, 2007, and to close on May 18, 2008. Applicant's Answer to the Notice of Opposition was due December 10, 2007.

On December 10, 2007, Applicant filed an answer denying the essential allegations in the Notice of Opposition. On April 14, 2008, Opposer served the Applicant with Opposer's First Request for the Production of Documents and Opposer's First Set of Interrogatories to Applicant. (Copies of these Requests are attached as Exhibit A.) Responses to Opposer's discovery requests were due May 14, 2008. On April 19, 2008 Opposer served Applicant with Opposer's Request for Deposition (copy of which is attached as Exhibit B). This deposition was scheduled to be conducted in Brooklyn, NY on May 15, 2008 near Applicant's address in the city of Applicant's residence as listed with the TTAB.

Opposer's requests were all served on Applicant within the time permitted by 37 CFR § 2.120(a) and were in compliance with all applicable discovery rules. The deposition was noticed in compliance with Fed. R. Civ. P. 30(b) and 37 CFR § 2.120(a). The deposition was scheduled to be completed at an appropriate venue in accordance with 37 CFR § 2.120(b) based on Applicant's residential address contained in the record.

On May 7, 2008, after a phone call by Opposer on May 6 confirming receipt of said notices, Applicant sent Opposer notice via fax (attached as Exhibit C) indicating that Applicant needed to reschedule the deposition because she was unavailable. In addition, she notified Applicant that it would be more convenient if Opposer would send future communications to Applicant's home address, which was different from that listed with the TTAB.

More than ten days after a response was due, On May 27, 2008, Applicant sent Opposer's attorney a letter refusing to provide discovery (attached as Exhibit D). In the letter, Applicant stated that Opposer's discovery demands were premature and improper because "Opposer never attempted, in good faith, to hold required Discovery Plan Conference or work out a Discovery schedule with the Applicant...prior to initiating Discovery demands...." In addition, Applicant stated that because leave of court was not obtained prior to Opposer's "unilateral discovery demands" and because Opposer made no attempt to schedule or hold a Discovery Plan Conference, Opposer had waived any right to further Discovery.

Opposer then responded via First Class Mail on May 27, 2008 (attached as Exhibit E) to Applicant's May 27, 2008 letter demanding compliance with Opposer's Discovery Requests, referring Applicant to the relevant rules and suggesting she obtain counsel. Specifically, Opposer requested compliance by (1) producing documents responsive to Opposer's request for production, (2) providing written responses to Opposer's interrogatories, and (3) rescheduling her deposition.

On June 2, 2008, via facsimile, Applicant provided written responses to Opposer's First Set of Document Requests and Interrogatories. However, Applicant has still refused to comply with Opposer's Deposition request as stated in her June 2, 2008 transmittal letter (attached as Exhibit F).

II. MOTION TO COMPEL

A. Opposer Has Made a Good Faith Effort to Work with Applicant

In accordance with Trademark Rule 2.120(e), Opposer submits that it has made a good faith effort to resolve with Applicant the issues presented in the motion.

Specifically, Opposer has contacted Applicant and requested that she comply with Discovery Demands and that she obtain competent counsel, but Applicant has not responded timely to Opposer's Requests and has made it abundantly clear that she will not. As detailed above, Applicant has not responded timely to Opposer's discovery requests, and has informed Opposer that such testimony will not be forthcoming in the foreseeable future.

B. Applicant Forfeited its Right to Object

The Trademark Trial and Appeal Board Manual of Procedure ("TBMP") provides that a party that fails to comply with discovery requests and deposition requests during the time allowed therefor, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to discovery on the merits. See TBMP §§ 403.03 and 407.01, citing Bison Corp. V. Perfecta Chemie B.V., 4 U.S.P.Q.2d 1718 (TTAB 1987); Luehrmann v. Kwik Kopy Corp., 2 U.S.P.Q.2d 1303 (TTAB 1987).

Notice was sent on April 19, 2008 scheduling Applicant's deposition for May 15, 2008, prior to the close of discovery. Applicant failed to appear or make herself available pursuant to the notice. Applicant's discovery responses were due on or before May 14, 2008. Applicant's belated responses were received on June 2, 2008, more than ten days after discovery had closed and more than three weeks after they were due. As we are now more than three weeks beyond the close of discovery and into the testimony period without receiving the requested discovery, Opposer is placed at a disadvantage in determining what testimony to seek in order to bolster its claims and rebut Applicant's assertions. Accordingly, Opposer respectfully requests that the Board order Applicant to fully respond to Opposer's Notice of Deposition without objections within the first twenty days from the mailing date of the Board's order on this motion.

III. MOTION TO EXTEND

In accordance with Fed. R. Civ. P. 6(b), Opposer hereby moves the Board for a thirty (30) days extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to review Applicant's deposition responses as ordered by the Board, and to pursue follow-up discovery if necessary. Opposer also requests an extension of its testimony periods.

As detailed above, Opposer has been diligent during the discovery period. Opposer served discovery prior to the discovery cut-off and after receipt of Applicant's Answer to the Notice of Opposition. Opposer has also expended considerable expense in obtaining local counsel and making counsel available for the Scheduled Deposition.

Opposer also made a good faith effort to resolve this matter before filing a motion to compel. Applicant, on the other hand, has not proceeded in good faith, denying all of Opposer's discovery requests and failing to review the rules governing this proceeding.

Opposer does not seek an extension of time for purposes of delay. It is requested that the limited thirty (30) day extension run from the date of service of Applicant's discovery responses as ordered by the Board, and that the discovery period be otherwise closed.

IV. CONCLUSION

For the reasons stated above, Opposer respectfully requests that the Board grant Opposer's motion to compel and order Applicant to respond to Opposer's Notice of Deposition without objections within twenty days from the mailing date of the Board's ruling on the motion. Opposer also respectfully requests that the Board grant Opposer's motion for an extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to review Applicant's discovery responses as ordered by the Board, and to pursue follow-up discovery if necessary. Opposer requests that the extension run from the date of service of Applicant's discovery responses as ordered by the Board, and that the discovery period be otherwise closed. Opposer requests that its testimony period be re-set to follow close of its discovery.

Dated: _____

Respectfully submitted,

Attorney for Opposer,
Marc Vianello

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application)	
Serial No.: 77/110,266)	
)	
Filed: April 14, 2008)	
)	
Applicant: Sandra L. Nudelman)	
)	
Mark: JUDICIAL REVIEW)	
)	
Published: August 14, 2007)	
_____)	Opposition No. 91180471
)	
MARC VIANELLO,)	
)	
Opposer,)	
)	
v.)	
)	
SANDRA L. NUDELMAN,)	
)	
Applicant.)	
_____)	

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to Section 2.120 of the Rules of Practice in Trademark Cases and Rule 33 of the Federal Rules of Civil Procedure, Opposer, Marc Vianello, by its undersigned attorneys, requests that Applicant, Sandra L. Nudelman, answer the following interrogatories in accordance with the instructions below. As required by Rule 33, the interrogatories are to be answered separately, under oath, within thirty (30) days from their date of service. These interrogatories are continuing and the responses thereto must be supplemented to the extent required by Fed. R. Civ. P. 26(e).

Instructions and Definitions

Unless otherwise indicated, the following definitions and instructions shall be applicable:

A. "Opposer" means Marc Vianello and each of his employees, agents or representatives, accountants, attorneys or other individuals acting or purporting to act on her behalf.

B. "Applicant" means Sandra L. Nudelman. and each of her employees, agents or representatives, accountants, attorneys or other individuals acting or purporting to act on her behalf.

C. "Use" of the JUDICIAL REVIEW mark shall infer to the actual use of the mark and/or the intended use of the mark.

D. Reference to Applicant's JUDICIAL REVIEW mark refers to the mark identified in U. S. trademark application Serial No. 77/110,266 and/or any variations of such mark.

E. "Documents" shall have the same meaning and scope as in Rule 34(a) of the Federal Rules of Civil Procedure and shall include without limitation correspondence, memoranda, reports, minutes of meetings, agreements, notes, studies, plans, analyses, work papers, statistical and financial records, stationery, letterhead, press releases, records or notes of meetings, conferences, telephone calls, or other conversations, invoices, checks, printouts, videos, photographs, microfilms, microfiche, data processing tapes, disks, or other records, phonographs, tapes, product prototypes, or other recordings, data compilations and all copies of any documents that contain any notation or otherwise differ from the original and other copies, in the possession, custody or under the control of Applicant and specifically including any and

all drafts of the above and any and all handwritten notes or notations in whatever form.

F. When used in connection with a person, "identify" means to state the person's full name, present (or last known) address, present place of business or employment, present position, present phone number, and email address.

G. When used in connection with a document, "identify" means to state the document's title or other subject matter identification, date, author(s) and recipient(s) (including all recipients of copies).

H. When used in connection with an occurrence, "identify" means to state the date of the occurrence, the person or persons involved in the occurrence, if the occurrence was recorded, each and every document related to the occurrence, and any follow up activities related to the occurrence.

I. When used in connection with a company, "identify" means to state the company's full legal name, its trading name(s) if any, its place of incorporation if any, its principal business address, and the identity of the person or persons having knowledge of the matter with respect to which the company is named.

J. Wherever used herein, the singular shall be deemed to include the plural, the plural shall be deemed to include the singular; the masculine shall be deemed to include the feminine and the feminine shall be deemed to include the masculine; the disjunctive ("or") shall be deemed to include the conjunctive ("and"), and the conjunctive ("and") shall be deemed to include the disjunctive ("or").

K. A document "relating," "related," or "which relates" to any given subject includes any document that constitutes, contains, embodies, evidences, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation,

documents concerning the preparation of other documents.

L. If a claim of privilege is asserted concerning any document for which identification is requested, please:

1. Identify the document with sufficient particularity so the matter may be brought before the Board. This identification should include its date, author, recipients, length and subject matter;
2. State the nature of the privilege asserted; and
3. State in detail the basis for the claim of privilege.

M. To the extent that you consider any of the following interrogatories subject to objection, respond to that part of each interrogatory to which you do not object, and separately describe that part of each interrogatory to which you object and each ground for objection.

Interrogatories

Interrogatory No. 1

A. Identify by common commercial descriptive name each product and/or service which has been or is intended to be sold, offered for sale, manufactured, advertised and/or rendered by Applicant in the United States under the JUDICIAL REVIEW mark.

B. For each type of product and service identified in answering subpart "A" above:

i. State the date of first use by Applicant in the United States of the JUDICIAL REVIEW mark in connection with the product or service;

ii. Describe the circumstances surrounding such first use;

iii. Identify the geographical location of such first use;

iv. State the date and geographical location of last use in the United States of the JUDICIAL REVIEW mark in conjunction with the product or service;

v. State the dollar volume of sales of the product or service bearing the JUDICIAL REVIEW mark from the date of first use to the present, on a yearly basis;

vi. State the dollar volume expended by Applicant in advertising the product or service bearing the JUDICIAL REVIEW mark from the date of first use to the present, on a yearly basis;

vii. Describe the wholesale, retail and/or other channels of trade in the United States through which the product or service is distributed, rendered and/or sold;

viii. State the intended end use of the product or service;

ix. Identify each type or class of consumers and/or end users for the

product or service and/or the characteristics of the consumers and/or end users for the product or service, and the class or type of purchaser or end user to which Applicant concentrates its marketing efforts.

Answer:

Interrogatory No. 2

In connection with Applicant's Affirmative Defenses, explain with particularity each fact known to Applicant which it asserts is a basis for such Affirmative Defenses.

Answer:

Interrogatory No. 3

A. Identify individuals and/or businesses and identify the nature of such individuals and/or businesses who buy, sell and/or use and/or are intended to buy, sell and/or use Applicant's services bearing the JUDICIAL REVIEW mark.

B. For each service listed in Applicant's application, explain with particularity the purpose of such services, the uses of such services and those who are intended to receive such services.

Answer:

Interrogatory No. 4

Identify each person who supervised, participated in or was involved in the origination, clearance, selection, and adoption of the JUDICIAL REVIEW mark to identify Applicant and Applicant's services, and describe with particularity the circumstances surrounding the origination, clearance, selection, and adoption of the JUDICIAL REVIEW mark including, but not limited to, the date of origination, the derivation of the mark, the meaning or suggestive connotation of the mark, if any, and identify any searches that were conducted for third party uses or registrations of the JUDICIAL REVIEW mark.

Answer:

Interrogatory No. 5

State the date Applicant first became aware of Opposer's use of THE JUDICIAL VIEW mark, and describe the circumstances surrounding this first awareness, including, but not limited to, the identity of the person(s) associated with Applicant who first became aware of Opposer's use thereof.

Answer:

Interrogatory No. 6

Identify all occurrences of actual confusion known to Applicant resulting from the contemporaneous use or offering of the JUDICIAL REVIEW mark by Applicant and THE JUDICIAL VIEW mark by Opposer, giving the date of, location of, and circumstances surrounding each such occurrence, including the persons confused in each case and the persons witnessing each such occurrence.

Answer:

Interrogatory No. 7

A. Identify each magazine and trade journal in which Applicant has advertised or plans to advertise or promote itself or its services under the JUDICIAL REVIEW mark.

B. Identify each trade presentation, seminar, and meeting Applicant has attended or plans to attend at which it promoted itself or its services under the JUDICIAL REVIEW mark.

C. Identify any other media, including internet websites Applicant has used or intends to use to promote itself or its services under the JUDICIAL REVIEW mark, including the dates of such use, the name of each media, and the person who has custody of the copy of each use.

Answer:

Interrogatory No. 8

Identify each individual, employee, agent or representative of Applicant, from the earliest date of use of the JUDICIAL REVIEW mark asserted by Applicant to the present, who was and/or is primarily responsible for marketing, advertising, sales or other distribution, or manufacturing of any products or services made, rendered, sold, offered for sale, distributed by Applicant, or intended for sale or distribution under the JUDICIAL REVIEW mark and briefly describe their respective duties and the products or services for which they are or were responsible.

Answer:

Interrogatory No. 9

Identify all advertising agencies, marketing agencies or other business entities, and the account executives at each such agency or other entity, that have been responsible for the advertising and promotion of Applicant's goods or services bearing the JUDICIAL REVIEW mark and state the time period when each was so responsible.

Answer:

Interrogatory No. 10

Identify all agreements, including licenses and assignments, entered into by Applicant relating to the JUDICIAL REVIEW mark, and identify all persons participating in the negotiation and creation of each such agreement and the parties to each such agreement.

Answer:

Interrogatory No. 11

Identify all interviews, surveys, or public opinion polls conducted by or on behalf of Applicant pertaining or relating to the JUDICIAL REVIEW mark by date, title, and company or other entity conducting the interview, survey, or public opinion poll and the person requesting the survey.

Answer:

Interrogatory No. 12

A. Identify with particularity all trademark registrations of, and all trademark applications to register the JUDICIAL REVIEW mark or other designations including the formative "JUDICIAL REVIEW" owned and/or filed by Applicant in the United States (including state applications and registrations) by date of registration or filing date, status, registration or serial number, country or state, the goods and/or services listed in the application or registration, and the date or dates of first use claimed in the application or registration.

B. If any application identified in answering subpart "A" above was abandoned without a registration issuing therefrom, identify each such application, state the date of abandonment, and state why the application was abandoned.

Answer:

Interrogatory No. 13

Identify all objections by Applicant and all legal proceedings instituted by Applicant against third parties' use of trade names, trademarks, service marks or other designations based on Applicant's perceived rights in the JUDICIAL REVIEW mark and provide:

- (a) Country or state in which the objection was made or in which the legal proceeding was filed;
- (b) Name and address of the third party;
- (c) Date of objection or institution of the legal proceeding;
- (d) Court, governmental agency or other forum in which the objection or legal proceeding was filed;
- (e) Status or outcome of the objection or legal proceeding;
- (f) The mark(s) employed by the third party which was (were) the subject of the objection or legal proceeding.

Answer:

Interrogatory No. 14

Identify all objections by third parties made to Applicant and all legal proceedings instituted by third parties against Applicant related in any way to Applicant's use of the JUDICIAL REVIEW mark, including the marks and goods and services involved and the outcome of the controversy.

Answer:

Interrogatory No. 15

Identify each person who had more than a clerical role in preparing the answers to these interrogatories and the responses to the contemporaneously served first requests for production of documents, stating specifically the number of each interrogatory or request for production for which such person supplied information or documents.

Answer:

Interrogatory No. 16

If documents and things identified in answering these interrogatories are known or believed to exist but are not in Applicant's possession, custody or control, identify each such document and thing insofar as it is possible to do so, and identify who has possession, custody or control of such document or thing.

Answer:

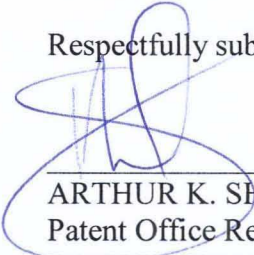
Interrogatory No. 17

Identify any expert witnesses expected to testify in this opposition and set forth the substance of each expert's testimony.

Answer:

MARC VIANELLO

Respectfully submitted,



ARTHUR K. SHAFFER
Patent Office Reg. No. 50,257
INTELLECTUAL PROPERTY CENTER, LLC
9233 Ward Parkway, Suite 100
Kansas City, Missouri 64114
Telephone: (816) 363-1555
Facsimile: (816) 363-1201

Attorney for Opposer

Certificate of Service

I hereby certify that a copy of the foregoing Opposer's First Set of Interrogatories to Applicant has been served by first class mail, postage prepaid, on Sandra L. Nudelson 92 Stone Hurst Lane, Dix Hills, NY 11746-7934, this 14th day of April, 2008.



Jeffrey Sonnabend

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Brooklyn, NY 11215
718-832-8810
JSonnabend@SonnabendLaw.com

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application)	
Serial No.: 77/110,266)	
)	
Filed: April 18, 2008)	
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Applicant: Sandra L. Nudelman)	
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Mark: JUDICIAL REVIEW)	
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Published: August 14, 2007)	
_____)	Opposition No. 91180471
MARC VIANELLO,)	
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v.)	
)	
SANDRA L. NUDELMAN,)	
)	
Applicant.)	
_____)	

OPPOSER'S FIRST SET OF DOCUMENT REQUESTS TO APPLICANT

Pursuant to Fed. R. Civ. P. 34 and 37 C.F.R. § 2.120(d)(2), Opposer, Marc Vianello, by its undersigned attorneys, hereby serves the following Document Requests on Applicant.

Instructions and Definitions

The definitions provided in Opposer's First Set of Interrogatories to Applicant are incorporated herein by reference.

Requests

Request No. 1

All documents identified by Applicant in her responses to Opposer's First Set of Interrogatories to Applicant.

Request No. 2

All documents relating to the use of the JUDICIAL REVIEW in commerce by Applicant.

Request No. 3

All documents concerning any trademark searches that Applicant or its representatives or agents (including without limitation attorneys) performed in connection with the mark JUDICIAL REVIEW.

Request No. 4

All documents comprising, constituting, concerning or relating to advertising, promoting or marketing of any services under the mark JUDICIAL REVIEW by Applicant.

MARC VIANELLO

Respectfully submitted,



ARTHUR K. SHAFFER
Patent Office Reg. No. 50,257
INTELLECTUAL PROPERTY CENTER, LLC
9233 Ward Parkway, Suite 100
Kansas City, Missouri 64114
Telephone: (816) 363-1555
Facsimile: (816) 363-1201

Attorney for Opposer

Certificate of Service

I hereby certify that a copy of the foregoing Opposer's First Set of Document Requests to Applicant has been served by first class mail, postage prepaid, on Sandra L. Nudelson 92 Stone Hurst Lane, Dix Hills, NY 11746-7934, this ____ day of April, 2008.

Jeffrey Sonnabend

SonnabendLaw
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

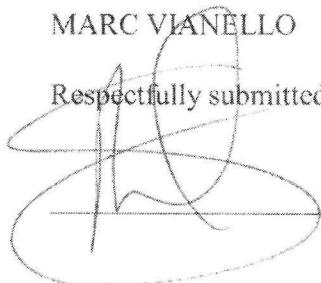
In the matter of application)	
Serial No.: 77/110,266)	
)	
Filed: February 18, 2007)	
)	
Applicant: Sandra L. Nudelman)	
)	
Mark: JUDICIAL REVIEW)	
)	
Published: August 14, 2007)	
_____)	Opposition No. 91180471
MARC VIANELLO,)	
Opposer,)	
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v.)	
)	
SANDRA L. NUDELMAN,)	
Applicant.)	
_____)	

OPPOSER'S NOTICE OF DEPOSITION TO APPLICANT

Please take notice that pursuant to Fed. R. Civ. P. 30 and 37 CFR § 2.120(b), Opposer, Marc Vianello, will take the deposition upon oral examination of Sandra L. Nudelman, residing at 92 Stonehurst Ln, Dix Hills, NY 11746-7934. The deposition will occur at 189 Montague Street, Suite 503, Brooklyn, NY commencing at 9:30 a.m. on May 15, 2008. The deposition will be recorded by stenographic means before a qualified notary public.

MARC VIANELLO

Respectfully submitted,



ARTHUR K. SHAFFER
Patent Office Reg. No. 50,257
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9233 Ward Parkway, Suite 100
Kansas City, Missouri 64114
Telephone: (816) 363-1555
Facsimile: (816) 363-1201

Attorney for Opposer

Certificate of Service

I hereby certify that a copy of the foregoing Opposer's Notice Of Deposition To Applicant has been served by first class mail, postage prepaid, on Sandra L. Nudelman 92 Stone Hurst Lane, Dix Hills, NY 11746-7934, this 19 day of April, 2008.



Jeffrey Sonnabend

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Sandra Nudelman
131 Sewall Ave. #46
Brookline, MA 02446
May 7, 2008

Arthur Shaffer
Intellectual Property Center, LLC
9233 Ward Parkway, Suite 100
Kansas City, MO 64114
VIA FACSIMILE: (816) 363-1201

Dear Mr. Shaffer:

I just received your letter regarding the deposition scheduled for May 15, 2008. Unfortunately, I will have to re-schedule given that I have since moved to Massachusetts, and am currently out-of-state on business in Illinois until the end of June. If it is more convenient, I would be happy to answer any questions you have in a written format. If so, please send them to my home address above so that I can have them forwarded to me more directly.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Nudelman".

Sandra Nudelman

Sandra L. Nudelman
131 Sewall Ave. #46
Brookline, MA 02446
May 27, 2008

Via Priority Mail and Facsimile

Marc Vianello
c/o Arthur K. Shaffer
Intellectual Property Center, I.L.C.
9233 Ward Parkway, Suite 100
Kansas City, MO 64114

Re: Marc Vianello v. Sandra L. Nudelman
91/180471

Dear Mr. Vianello:

As you know, on May 7, 2008, in response to a voicemail from the attorney representing the Opposer, Applicant sent Opposer a facsimile noting that she would be unable to attend the deposition that Opposer had unilaterally scheduled for May 15, 2008 in Brooklyn, NY. At the time Applicant sent the facsimile response, she noted that she had recently moved from Dix Hills, NY to Brookline, MA and because of this move, and because of significant out-of-town travel, she had not had the opportunity to consult or retain new counsel there. Applicant has since filed a Change of Correspondence Address Form with the Court, which will be served to

Opposer under separate cover. Applicant has not received any response to her facsimile communication from the Opposer or attorneys representing the Opposer.

Applicant has since been advised that the discovery demands sent by Opposer to Applicant on April 14, 2008 were premature and improper because the Opposer failed to comply with FRCP 26(d), FRCP 26(f) and 37 CFR 2.120. The Opposer never attempted, in good faith, to hold the required discovery plan conference or work out a discovery schedule with the Applicant, pursuant to FRCP 26(f), prior to initiating discovery demands, as required by CFR 2.120 and FRCP 26(d). The rule set forth in 37 CFR 2.120 expressly states:

(2) The discovery conference shall occur *no later than the opening of the discovery period*, and the parties must discuss the subjects set forth in Federal Rule of Civil Procedure 26(f) and any subjects set forth in the Board's institution order. [Emphasis added.]

Similarly, as stated in FRCP 26(d), unless leave of Court is obtained, interrogatories may not be served prior to the meeting of the parties under FRCP Rule 26(f):

(1) *A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)*, except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order. [Emphasis added.]

Applicant holds that:

1. The Opposer had a burden to schedule and hold a discovery plan conference, as required by rule FRCP 26(f), prior to initiating any discovery demands, including interrogatories and document requests, as required by CFR 2.120 and FRCP 26(d).

2. Contrary to CFR 2.120 FRCP 26(d), no discovery plan conference was scheduled or held, no mutually-agreeable discovery plan was stipulated to by Applicant and Opposer, and the leave of the Court was not obtained before the Opposer's unilateral demands for discovery were made to the Applicant.
3. No attempt was made by Opposer to schedule or hold a discovery plan conference, and no mutually-agreeable discovery plan stipulated to by Applicant and Opposer after Applicant's facsimile response to Opposer on May 7, 2008 or prior to the close of the discovery period on May 18, 2008.
4. Since the discovery period has now expired, and no discovery plan conference was initiated or held by the Opposer, Opposer has waived any right to further discovery under CFR 2.120 and FRCP 26(d).

Sincerely,



Sandra Nudelman

131 Sewall Ave. #46

Brookline, MA 02446

Applicant

Certificate of Service

I hereby certify that a copy of the foregoing letter has been served by Priority Mail, postage prepaid, to Arthur K. Shaffer, Intellectual Property Center, LLC, 9233 Ward Parkway Suite 100, Kansas City, MO 64114 and by facsimile to Arthur K. Shaffer, Intellectual Property Center, LLC at (816) 363-1201 on this 27th day of May, 2008.



Sandra L. Nudelman

131 Scwall Ave. #46

Brookline, MA 02446



Sent Via First Class Mail
May 27, 2008

Sandra L. Nudelman
131 Sewall Ave. # 46
Brookline, MA 02446

Re: Marc Vianello v. Sandra Nudelman
Opposition No. 91/180471

Ms. Nudelman:

In response to your letter dated May 27, 2008, Applicant's failure to provide the requested discovery, which includes interrogatories, document requests, and your duly noticed deposition, is noted. Your basis for refusing to comply with Opposer's discovery requests, however, is baseless, and Opposer requests immediate compliance in providing the requesting discovery.

Contrary to your contentions, Opposer's discovery demands were proper and in compliance with 37 CFR 2.120 and the Federal Rules of Civil Procedure in force at the time the above referenced opposition proceeding was filed. Specifically, the amended provisions at 37 CFR 2.120 you cite in your letter are applicable only to cases commenced on or after November 1, 2007 (see:http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf).

The case in question was commenced on October 31, 2007, and so the amended rules do not apply.

Therefore, Opposer requests immediate compliance with the discovery requests. Compliance includes: (1) production of responsive documents; (2) providing proper written responses to Opposer's interrogatories; and (3) rescheduling your deposition, which you have unilaterally cancelled. In addition, Opposer has received notice that Applicant's address has changed from that previously provided in the record and hopes Applicant will notify the board in advance of any further changes of correspondence.

Finally, we understand you have refused to obtain counsel; however, your decision to proceed *pro se* does not excuse you from compliance with the rules applicable to the present matter. We trust that you will conduct yourself accordingly in the future and will not make additional frivolous objections.

Sincerely,

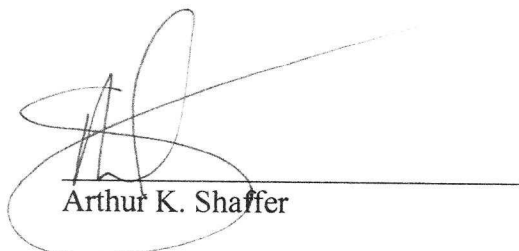
INTELLECTUAL PROPERTY CENTER, LLC

By: _____

Arthur K. Shaffer

Certificate of Service

I hereby certify that a copy of the foregoing Opposer's First Set of Interrogatories to Applicant has been served by first class mail, postage prepaid, on Sandra L. Nudelman, 131 Sewall Ave. #46, Brookline, MA 02446 this 27th day of May, 2008.



Arthur K. Shaffer

INTELLECTUAL PROPERTY CENTER, LLC
9233 Ward Parkway
Suite 100
Kansas City, MO 64114
Phone: (816) 363-1555
Facsimile: (816) 363-1201
E-mail: ashaffer@theIPCenter.com

Sandra L. Nudelman
131 Sewall Ave. #46
Brookline, MA 02446
June 2, 2008

Via Priority Mail and Facsimile

Marc Vianello
c/o Arthur K. Shaffer
Intellectual Property Center, LLC
9233 Ward Parkway, Suite 100
Kansas City, MO 64114

Re: Marc Vianello v. Sandra L. Nudelman
91/180471

Dear Mr. Vianello:

I would first like to correct some of the misstatements in the letter of your counsel dated May 27, 2008:

1. **I did not unilaterally cancel my deposition.** As noted in my fax to your counsel on May 7, 2008, which I referenced in my letter dated May 27, and which you did not deny receiving thereafter, I was willing at that time to re-schedule the deposition that your counsel had unilaterally scheduled for May 15. However, neither you nor your counsel responded to that request for re-scheduling by the close of the discovery period on May 18, 2008. As such, I hold that you have

waived the right to conduct a deposition. As a show of good faith, however, I am willing to provide answers to your requested written interrogatories and to provide the requested documentation.

2. I have not refused to obtain counsel. Again, as stated in my fax to your counsel dated May 7, 2008, between my move to Massachusetts and the fact that my job requires me to be out of town ~75% of the time, and nearly the entire work week, it has been difficult for me to find appropriate representation at my new location.

Furthermore, I would like to stipulate that all future service to me be conducted via e-mail in addition to traditional mail service, as this will significantly expedite my ability to respond to your requests in a timely fashion. Also, please do not use facsimile as a means of communication with me again, as I do not have a regular facsimile number.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Nudelman", written in a cursive style.

Sandra Nudelman

sandranudelman@gmail.com

131 Sewall Ave. #46

Brookline, MA 02446

Applicant

Certificate of Service

I hereby certify that a copy of the foregoing letter has been served by Priority Mail, postage prepaid, to Arthur K. Shaffer, Intellectual Property Center, LLC, 9233 Ward Parkway Suite 100, Kansas City, MO 64114 and by facsimile to Arthur K. Shaffer, Intellectual Property Center, LLC at (816) 363-1201 on this 2nd day of June, 2008.

A handwritten signature in dark ink, appearing to read 'Sandra L. Nudelman', written over a horizontal line.

Sandra L. Nudelman

131 Sewall Ave. #46

Brookline, MA 02446